UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Fern Solar LLC	)	Docket No. EL20-62-000

ANSWER OF THE INDEPENDENT MARKET MONITOR FOR PJM

To: The Honorable Scott Hempling
Presiding Administrative Law Judge

Pursuant to Rule 213 of the Commission's Rules and Regulations,[1] Monitoring Analytics, LLC, acting in its capacity as the Independent Market Monitor ("Market Monitor") for PJM Interconnection, L.L.C. ("PJM"), submits this answer to the motion of Fern Solar LLC ("Fern Solar") for summary disposition and motion to strike filed in this proceeding on July 14, 2022 ("Motions").[2] The Motions request summary disposition on several issues raised or allegedly raised in the Market Monitor's direct and answering testimony of Dr. Joseph Bowring filed June 15, 2022 ("Bowring Testimony'). To the extent that the motion for summary disposition may be granted, Fern Solar requests that certain portions of the Market Monitor's testimony be stricken. To the extent the motion for summary disposition is not granted, Fern Solar requests an additional six weeks to file answering testimony.

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1 18 CFR § 385.213 (2021).

2 Capitalized terms used herein and not otherwise defined have the meaning used in the PJM Open Access Transmission Tariff ("OATT"), the PJM Operating Agreement ("OA") or the PJM Reliability Assurance Agreement ("RAA").

Fern Solar has not supported its motion to strike any portion of the Bowring Testimony. Fern Solar's motion for summary disposition fails to articulate the legal questions to be decided and is premature. The Motions should be denied.

I. ANSWER

A. Fern Solar Fails to Support Its Motion to Strike.

Fern Solar moves to strike testimony from the evidentiary record arguing (at 1) "Complainants have provided substantial testimony on issues that are outside the scope of this proceeding and have presented testimony collaterally attacking the Commission's clear legal holdings."

There is no basis in fact or law for Fern Solar's statement, but, even if there were, Fern Solar misstates the standard under which motions to strike are considered.

Rule 509 provides: "The presiding officer should exclude from evidence any irrelevant, immaterial, or unduly repetitious material. The presiding officer may also exclude from evidence any other material which the presiding officer determines is not of the kind which would affect reasonable and fair-minded persons in the conduct of their daily affairs."[3] The Commission has explained that "motions to strike are viewed unfavorably" and that "the movant carries a heavy burden when seeking to strike testimony from the record."[4] Commission precedent further holds that "relief is granted only when 'the matters sought to be omitted from the record 'have no possible relationship to the controversy, may confuse the issues, or otherwise prejudice a party.'"'[5] The heavy

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[3] 18 CFR § 385.509(a).

[4] *Ind. Mun. Power Agency v. PJM Interconnection, L.L.C.*, 172 FERC ¶ 61,243, 62623 (2020), citing L*a. Pub. Serv. Comm'n v. Entergy Servs.*, Inc., 163 FERC ¶ 51,117 at P 74 (2018) (quoting *Power Mining, Inc.*, 45 FERC ¶ 61,311, 61,972 n.1 (1988) (citations omitted)).

[5] *Id*.

burden on the movant is justified "because a complete record upon which the Commission can base its decision is the preferred approach in administrative proceedings."[6]

The Bowring Testimony is clearly related to the issues in controversy in this proceeding, does not present a significant risk of confusing the record, and is not unduly repetitive. Fern Solar has not argued otherwise. Fern Solar's misguided argument that points raised in the Bowring Testimony contradict Fern Solar's view of the applicable law effectively concede that the Bowring Testimony is relevant and material.

The Bowring Testimony constitutes expert criticism of the proposed rate and the means used to calculate it. Dr. Bowring does not argue how the law is properly applied. Fern Solar does not know and cannot evaluate the Market Monitor's legal position at this stage of the proceeding. Fern Solar's legal arguments are appropriately reserved to the briefs. Fern Solar's motion to strike does not meet the applicable standard. Fern Solar has not carried its burden. The Motion to Strike should be denied.

B. Because the Market Monitor Does Not Seek Changes to PJM OATT Schedule 2 as Fern Alleges, Fern Solar's Motion to Strike Is Based on a False Premise.

Fern Solar alleges (at 9): "The testimony of Dr. Joseph Bowring, on behalf of the PJM IMM challenges the policy of Schedule 2 and advocates for changes to Schedule 2 and the associated PJM tariff provisions related to the PJM capacity market." Fern further alleges (at 10): "The Commission's 2021 opinion in Panda Stonewall addressed this very issue and held that "[t]he Market Monitor's issue therefore is outside the scope of this proceeding." Fern Solar's position is based on a false premise. The Bowring Testimony is not provided to support any argument for changes to Schedule 2 or other PJM tariff provisions in this proceeding. It is undisputed that changes to the PJM market rules are not within the proper

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[6] *See* E*psilon Trading, LLC v. Colonial Pipeline Co.*, 170 FERC ¶ 61,149, 62099–62100 (2020); *Panhandle East Pipe Line Co., LP*, 172 FERC ¶ 63,013, 66160 (2020); *see also City of Prescott v. Southwestern Elec. Power Co.*, 168 FERC ¶ 61,177, 61970 (2019); *Tres Palacios Gas Storage LLC*, 160 FERC ¶ 61,107, 61459 (2017).

scope of this proceeding. This proceeding concerns an evaluation of whether Fern Solar has a just and reasonable rate for reactive capability supply. The Bowring Testimony is relevant to whether Fern Solar proposed a just and reasonable rate under Schedule 2.

For the same reason, Fern Solar's reliance on *Panda Stonewall* is misplaced. The premise for the Panda Stonewall decision is that the Market Monitor sought changes to the PJM market rules.[7] The Market Monitor seeks no changes to the PJM market rules in this proceeding.

Fern Solar claims that the Bowring Testimony (Exhibit IMM-0001 at 1:18–2:13) "is really a challenge to Schedule 2 and the PJM compensation mechanism." Fern Solar claims that the Bowring Testimony (Exhibit IMM-001 at 5:4–6:2) argues for "revisions to Schedule 2 and the PJM tariff provisions governing Net CONE calculations." Fern Solar's argument rests on a false premise. The Bowring Testimony does not seek to challenge Schedule 2. The Bowring Testimony is not filed in order to support changes to the PJM market rules in any respect. The Bowring Testimony is about how Schedule 2 should be interpreted and applied in order to be consistent with the existing framework of the PJM market rules. The Bowring Testimony is relevant and material to the rate proposed in this case by Fern Solar. The motion to strike this portion of the Bowring Testimony should be denied.

Fern Solar argues that the Bowring Testimony claims (at Exhibit IMM-0001 at 4:21–5:3) that "reactive resources should be compensated by the PJM auction, not Schedule 2." Fern Solar mischaracterizes the Bowring Testimony. Dr. Bowring explains that resources are compensated through PJM markets under the explicit assumption that they receive no more than $2,199 per MW-Year through cost of service rates under Schedule 2. The Bowring

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[7] *See Panda Stonewall LLL*, Opinion No. 574, 174 FERC ¶ 61,266 at P 218 (2021) ("The Commission finds that the issue of double recovery raised by the Market Monitor is a problem the Market Monitor perceives in the methodology for determining the EAS Offset[footnote omitted] in PJM's capacity market. The Market Monitor's issue therefore is outside the scope of this proceeding").

Testimony is relevant and material to whether the level of the proposed rates is just and reasonable. The motion to strike this portion of the Bowring Testimony should be denied.

Fern Solar moves to strike the sentence in the Bowring Testimony (Exhibit IMM-0001, 6:11-12) stating: "Separately compensating resources based on a judgement based allocation of total capital costs was never and is not now appropriate in the PJM markets." The indicated sentence provides context and facilitates a full understanding of the Bowring Testimony. The language is relevant and material to the Market Monitor's position in this case. The motion to strike the indicated sentence should be denied.

Fern Solar objects that portions of the Bowring Testimony dispute the compensation mechanisms set forth in the PJM tariff, argue that there is "no logical reason" to maintain Schedule 2, and advocate for a revised compensation mechanism where generators would receive compensation for reactive power through PJM's Capacity Market and not through existing Schedule 2 (Exhibit IMM-0001, 6:16-28). The indicated portions of the Bowring Testimony provide context that is relevant and material to the evaluation of the proposed rate in this case. The motion to strike this portion of the Bowring Testimony should be denied.

C. The Market Monitor's Arguments Relating to the *AEP* Method Have Never Been Addressed in any Prior Decision.

Fern Solar objects to the Bowring Testimony (Exhibit IMM-0001 at 4:5-10) "concluding that the AEP methodology is limited to synchronous facilities." Fern Solar also objects to arguments (IMM-0001, 6:4-8:23) "against AEP methodology." The Bowring Testimony is relevant and material to whether Fern Solar properly relies on and properly applies the *AEP* Method. The motion to strike this portion of the Bowring Testimony should be denied.

Commission precedent does not determine the relevance or materiality of evidence to the issues in this proceeding. Nevertheless, Fern Solar does not show that the Commission has ruled on whether the *AEP* Method properly applies to asynchronous facilities. The Commission has recently identified the application of the *AEP* Method to an

asynchronous facility as an unresolved issue.[8] *Panda Stonewall* specifically limits its holding to synchronous facilities, indicating the potential significance to the difference between synchronous and asynchronous facilities.[9]

D. Power Factor.

Fern Solar objects to the Bowring Testimony (Exhibit IMM-0001 at 8:3–7, 15–16, 20–21) allegedly challenging "the Commission's holding that the power factor for new facilities is measured at the generator terminals." Fern Solar's objection does not demonstrate that the Bowring Testimony is irrelevant or immaterial to the issues in this proceeding. On the contrary, Fern Solar demonstrates that the Bowring Testimony is relevant and material. Where the power factor should be measured as a matter of law, if the issue is raised by the Market Monitor at all, is an issue properly reserved for briefs.

E. Investment Tax Credits.

Fern Solar objects to a portion of the Bowring Testimony (Exhibit IMM-0001 at 10:17-24, 11:8–10) that it describes as "arguing for a reduction in capital cost to account for the Solar Investment Tax Credit." The level of capital costs is relevant and material to whether the proposed rate is just and reasonable. The motion to strike this portion of the Bowring Testimony should be denied.

F. The Motion of Summary Disposition Should be Denied or Deferred.

In addition to seeking to strike evidence from the record, Fern Solar requests summary disposition of the following issues as a matter of law: "(1) challenges to the PJM Tariff's reactive power rate methodology as set forth in Schedule 2; (2) challenges to use of

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[8] *See Reactive Power Capability Compensation*, Notice of Inquiry, 177 FERC ¶ 61,118 at PP 20–28 (2021) ("Notice of Inquiry").

[9] *See* 174 FERC ¶ 61,266 at P 109 ("For these reasons, we affirm the Initial Decision's finding that Panda's reactive power capability should be based upon a power factor of 0.85 since the facility is a new synchronous generator facility and degradation of its reactive power output is not an issue.").

the 'AEP methodology' for calculating a just and reasonable rate for Fern Solar; (3) challenges to use of the generator's nameplate power factor in calculating a just and reasonable rate for Fern Solar; and (4) challenges to use of the interconnected utility's cost of capital in calculating a just and reasonable rate for Fern Solar and requests to consider components of Fern Solar's capital structure including the Solar Investment Tax Credit."

Rule 217(b) provides: "If the decisional authority determines that there is no genuine issue of fact material to the decision of a proceeding or part of a proceeding, the decisional authority may summarily dispose of all or part of the proceeding."[10] Granting a motion for summary disposition is at the discretion of the presiding officer.

Fern Solar argues (at 9) that "summary disposition is appropriate because the Complainants have had a reasonable opportunity to present arguments and factual support and, even when viewing the evidence in the most favorable light, a hearing is unnecessary and would not affect the ultimate disposition of these issues because there are no material facts in dispute." Contrary to Fern Solar's assertion, the motion is not ripe for resolution. The motion indicates that Fern Solar does not know or understand the issues to be raised in this proceeding and is unable to articulate them. This is not surprising because Fern Solar has not had the benefit of reading rebuttal testimony, intervenors' positions on the statement of the issues or intervenors' briefs because none of this information has been filed in this proceeding. Discovery has not yet concluded.

The issues raised thus far in this proceeding are those included in the hearing order by the Commission.[11] Fern Solar's rate is be investigated "in its entirety."[12] An investigation

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[10] 18 CFR § 385.217(b).

[11] *Fern Solar LLC*, 172 FERC ¶ 61,160 at P 14 (2020) ("Although we are setting the Rate Schedule for hearing in its entirety, we note that the accessory electric equipment allocator and costs, generator and exciter costs, balance of plant costs, administrative and general costs, and operation and maintenance costs may be excessive. We note that the collection system costs, substation costs, and SCADA costs appear to be incorrectly allocated to accessory electric equipment costs. In addition, we note that Fern Solar's Exhibit FS-3, Appendix B-1 does not appear to provide support for the

within the broad scope of that directive is currently in progress. "Complainants" have not had a reasonable opportunity to present arguments and factual support. Fern Solar is unable at present to articulate what those arguments will be. None of the "challenges" are articulated with specificity sufficient to define the legal question proposed for resolution. Fern Solar cannot identify the case law deciding an issue in its favor without identifying where the specific legal issue was raised and decided.

The premises for the "challenges" are not sufficiently explained and established. The assertion that there is a "power rate methodology set forth in Schedule 2" is unsupported. Fern Solar cites to prior decisions on the topic of investment tax credits, but does not explain how the decisions apply to any legal argument that may be raised in this case or demonstrate that the factual circumstances are the same. Neither case considered how to implement PJM OATT Schedule 2. Fern Solar does not cite to any case resolving the issue of the power factor appropriately used for an asynchronous unit. Fern Solar fails to support its own legal position, and it has not refuted every position on the indicated topics that could be argued by intervenors.

At this point in the procedural schedule, the parties have not submitted all of their testimony, have not contributed to a Joint Stipulation of Issues, and have not separately identified the issues that they intend to raise on brief. The procedural does not contemplate the submittal of dispositive motions until December 1, 2022.

Motions for summary disposition cannot be resolved based on the presentation of a series of topics. Summary disposition requires specific legal arguments so that they can decided on their legal merit, and, then, only if all disputed facts are viewed to the

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power factor and reactive allocator used by Fern Solar since the active power is at 60% percent of full real power output which is inappropriate since testing for reactive power output should occur when the generator is at full real power output. Also, Fern Solar did not provide underlying support for the costs claimed for its Facility.").

[12] *Id*.

advantage of the non movant. Time will not cure the motion's deficiencies. The motion is too vague to be deferred for future consideration in the initial decision, as Rule 517 provides.[13] The motion for summary disposition should be denied.

G. The Request for a Six Week Extension for Testimony Should Be Denied.

Fern Solar's request for an additional six weeks to respond to testimony that it seeks to strike should be denied. Fern Solar has not demonstrated a need for additional time and a six week extension cannot be fairly accommodated under the time constraints applicable to this hearing.

All testimony was timely filed and Fern Solar has not explained why it cannot respond to any issue raised in its answering testimony due August 30, 2022. Legal arguments raised by Fern Solar in this motion are properly reserved for briefs due January 26 and February 16, 2023. Fern Solar's request to file additional testimony is unfair to Staff and intervenors, who would, at a minimum, need additional time to respond to Fern Solar's testimony. Fern Solar has not supported its request for changes to the schedule for this proceeding.

[13] 18 CFR § 385.517(d)(ii)(B).

II. CONCLUSION

The Market Monitor respectfully requests that due consideration be afforded to this answer.

Respectfully submitted,

Joseph E. Bowring
Independent Market Monitor for PJM
President
Monitoring Analytics, LLC
2621 Van Buren Avenue, Suite 160
Eagleville, Pennsylvania 19403
(610) 271-8051
joseph.bowring@monitoringanalytics.com

Jeffrey W. Mayes

General Counsel
Monitoring Analytics, LLC
2621 Van Buren Avenue, Suite 160
Eagleville, Pennsylvania 19403
(610) 271-8053
jeffrey.mayes@monitoringanalytics.com

Dated: August 1, 2022

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon each person designated on the official service list compiled by the Secretary in this proceeding.

Dated at Eagleville, Pennsylvania,
this 1st day of August, 2022.

Jeffrey W. Mayes
General Counsel
Monitoring Analytics, LLC
2621 Van Buren Avenue, Suite 160
Eagleville, Pennsylvania 19403
(610) 271-8053
jeffrey.mayes@monitoringanalytics.com